

FILED

JAN 25 2013

**Board of Vocational Nursing
and Psychiatric Technicians**

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8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. VN-2011-2561

11 **AVELINO DEL VALLE MORA**

12 13838 Rath Street
13 La Puente, CA 91746

A C C U S A T I O N

14 Vocational Nurse License No. VN 245975

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
21 Psychiatric Technicians, Department of Consumer Affairs.

22 2. On or about November 10, 2009, the Board of Vocational Nursing and Psychiatric
23 Technicians issued Vocational Nurse License Number VN 245975 to Avelino Del Valle Mora
24 ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant
25 to the charges brought herein and will expire on October 31, 2013, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric
28 Technicians ("Board"), Department of Consumer Affairs, under the authority of the following

1 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
2 indicated.

3 4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the
4 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
5 section 2875) of the Vocational Nursing Practice Act.

6 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 6. Section 2878 of the Code states, in pertinent part:

11 "The Board may suspend or revoke a license issued under this chapter
12 [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of
the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the
14 following:

15 ...

16 (d) Violating or attempting to violate, directly or indirectly, or assisting
17 in or abetting the violating of, or conspiring to violate any provision or term of this
chapter.

18 ...

19 (f) Conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensed vocational nurse, in which event the record of the
conviction shall be conclusive evidence of the conviction.

21 ...

22 (j) The commission of any act involving dishonesty, when that action is
related to the duties and functions of the licensee."

23 7. Section 490 of the Code states, in pertinent part:

24 "(a) In addition to any other action that a board is permitted to take
25 against a licensee, a board may suspend or revoke a license on the ground that the
26 licensee has been convicted of a crime, if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the license
was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any
28 authority to discipline a licensee for conviction of a crime that is independent of the
authority granted under subdivision (a) only if the crime is substantially related to the

1 qualifications, functions, or duties of the business or profession for which the
licensee's license was issued.

2 (c) A conviction within the meaning of this section means a plea or
3 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
4 a board is permitted to take following the establishment of a conviction may be taken
5 when the time for appeal has elapsed, or the judgment of conviction has been
affirmed on appeal, or when an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code."

6 **REGULATORY PROVISIONS**

7 8. California Code of Regulations, title 16, section 2521, states, in pertinent part:

8 "For the purposes of denial, suspension, or revocation of a license
9 pursuant to Division 1.5 (commencing with Section 475) of the Business and
Professions Code, a crime or act shall be considered to be substantially related to the
10 qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
11 perform the functions authorized by his license in a manner consistent with the public
health, safety, or welfare. Such crimes or acts shall include but not be limited to those
12 involving the following:

13 ...

14 (c) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of, or conspiring to violate any provision or term of Chapter
15 6.5, Division 2 of the Business and Professions Code."

16 **COST RECOVERY**

17 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Conviction of Substantially Related Crime)**

25 10. Respondent is subject to disciplinary action under section 490 and section 2878,
26 subdivision (f) of the Code in conjunction with California Code of Regulations, title 16, section
27 2521 in that Respondent was convicted of a crime substantially related to the qualifications,
28 functions and duties of a licensed vocational nurse, as follows:

11. On or about April 10, 2012, Respondent pled nolo contendere to and was convicted of one misdemeanor count of violating Penal Code section 466 [possession of burglar's tools] in the criminal proceeding entitled *The People of the State of California v. Avelino Delvalle Mora* (Super. Ct. of California, County of Los Angeles, 2011, Case No. 1JB10659). The court sentenced Respondent to 3 years probation, with terms and conditions. As part of the sentence, the court ordered Respondent to serve 2 days in Los Angeles County Jail. The circumstances underlying the criminal conviction are that on or about December 7, 2011, County of Los Angeles Sheriff's Department Officers ("Officers") responded to a 'citizen detaining a misdemeanor suspect' call. Upon arriving, Officers contacted Respondent about an alleged fraudulent return. The Respondent told Officers that he decided make the fraudulent returns "before [he] came to the mall" and that he fraudulently returned the item for money "for the thrill" and that he had the magnet and paper clip with needle in his possession to "[take] off security sensors and stuff from the clothes." Respondent also admitted to previously stealing two shirts from Macy's.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

12. Respondent is subject to disciplinary action under section 2878, subdivision (a) of the Code on the grounds of unprofessional conduct in that Respondent possessed burglar's tools and fraudulently returned an item that he had not paid for. The conduct is described in more particularity in paragraph 11 above, inclusive and hereby incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(Act Involving Dishonesty)

13. Respondent is subject to disciplinary action under section 2878, subdivision (j) of the Code in that Respondent committed an act involving dishonesty when he possessed burglar's tools and fraudulently returned an item that he had not paid for. The act is described in more particularity in paragraph 11 above, inclusive and hereby incorporated by reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violate Provisions of Licensing Chapter)**

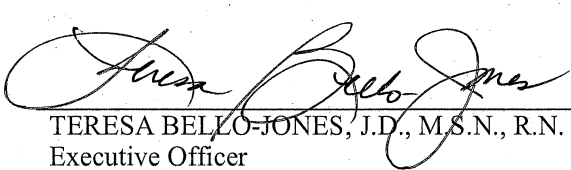
3 14. Respondent is subject to disciplinary action under section 2878, subdivision (d) of the
4 Code and California Code of Regulations, title 16, section 2521, subdivision (c) on the grounds of
5 unprofessional conduct in that Respondent violated provisions of the Vocational Nursing Practice
6 Act. The violations are described in more particularity in paragraphs 10 through 13 above,
7 inclusive and hereby incorporated by reference.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
11 issue a decision:

- 12 1. Revoking or suspending Vocational Nurse License Number VN 245975, issued to
13 Avelino Del Valle Mora;
- 14 2. Ordering Avelino Del Valle Mora to pay the Board of Vocational Nursing and
15 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18
19

20 DATED: JAN 25 2013

21 
22 TERESA BELLO-JONES, J.D., M.S.N., R.N.
23 Executive Officer
24 Board of Vocational Nursing and Psychiatric Technicians
25 Department of Consumer Affairs
26 State of California
27 Complainant
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